

# **Exhibit L**

THE CHAGARIS LAW FIRM, P.A.

-ATTORNEYS AT LAW-

POST OFFICE BOX 1408

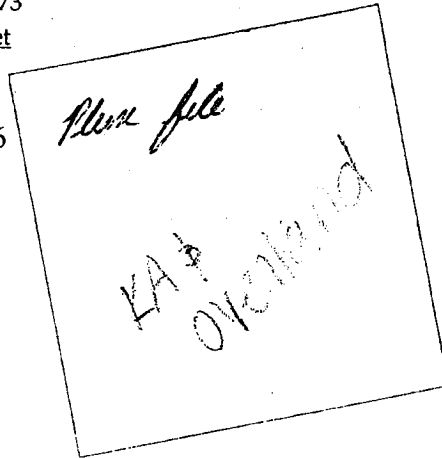
DAVIDSON, NORTH CAROLINA 28036

TELEPHONE (704) 894-9672

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chris.chagaris@att.net

September 28, 2006



Mr. Charles J. Diven, Jr.  
2649 Strang Blvd, Suite 104  
Yorktown Heights, NY 10598

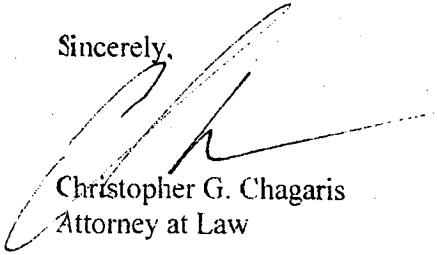
Re: *K. A. Holdings of New York, Inc. v. Overland Properties, Inc. &  
Hawthorne Mills, LLC. Case No. 03-CVS 012766*

Dear Mr. Diven:

Please find enclosed a stamp filed copy of the Transcript for the above referenced matter.

Should you have any questions, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,



Christopher G. Chagaris  
Attorney at Law

Enclosures  
CGC/rp

**Christina Lopez**

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**From:** <CHRISTMASDECO@aol.com>  
**To:** <chris.chagaris@att.net>  
**Cc:** <divenlawoffice@verizon.net>; <Cjdiven@aol.com>  
**Sent:** Thursday, September 28, 2006 10:42 AM  
**Attach:** Re\_ transcripts etc-URGENT.eml  
**Subject:** Fwd: transcripts etc-URGENT

Thanks for the reply. You kept your word  
What address did u mail transcript to- did you call CJ for his Federal Express #?

**What about the conference call you canceled and were going to reschedule??**

**Christina Lopez**

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**From:** <CALART100@aol.com>  
**To:** <divenlawoffice@verizon.net>  
**Cc:** <Cjdiven@aol.com>  
**Sent:** Tuesday, October 03, 2006 10:40 AM  
**Subject:** Chagaris

Christina:

I received the paper work for transcript for KA Holding from Chagaris. Do not need to be copied  
Need to see CJ written comments- can discuss- but want written explanation to refer to & how to proceed with  
this matter

I also want to be copied whether it be email or fax written correspondence to Chagaris  
He canceled a phone call conference I think 3 weeks ago???-check your records & has not rescheduled which  
should have been done the next day. I also want to set up a meeting face to face. Copy me on anything b4 u  
send as Carl Mancini/John Kulisek are the main principals. I want a written trail of this as it is getting quite  
frustrating!!!!!!!!!!!!!!

Also continue to call & we should have a log of phone calls as this guy never returns phone calls

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Internal Virus Database is out-of-date.

Checked by AVG Free Edition.

Version: 7.1.394 / Virus Database: 268.10.5/404 - Release Date: 7/31/2006

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 03-CVS-012766

K.A. HOLDINGS OF NEW YORK,  
INC.,

VS.

OVERLAND PROPERTIES, INC.,  
HAWTHORNE MILL, L.L.C.

T R A N S C R I P T

TRANSCRIPT OF PROCEEDINGS TAKEN IN THE GENERAL  
COURT OF JUSTICE, SUPERIOR COURT DIVISION, MECKLENBURG  
COUNTY, NORTH CAROLINA, AT THE MARCH 31, 2005, CIVIL  
SESSION BEFORE THE HONORABLE MARVIN K. GRAY, JUDGE  
PRESIDING.

APPEARANCES:

CHRISTOPHER CHAGARIS, ESQ.,  
P.O. BOX 1408  
DAVIDSON, NC 28036-1408  
ON BEHALF OF THE PLAINTIFF

DALE MORRISON, ESQ.,  
1043 E. MOREHEAD STREET, SUITE 200  
CHARLOTTE, NC 28204-2866  
ON BEHALF OF THE DEFENDANT

ALSO PRESENT:

PETER THOMPSON, ESQ.

LAURA ANDERSEN, RMR  
800 EAST FOURTH STREET, RM 311  
CHARLOTTE, NC 28202  
704-358-6233

P R O C E E D I N G S

THE COURT: ALL RIGHT. I BELIEVE

MR. MORRISON, THIS IS YOUR MOTION.

MR. MORRISON: IT IS, YOUR HONOR.

THE COURT: ALL RIGHT. GO AHEAD.

MR. MORRISON: MAY IT PLEASE THE COURT, WE  
HAD FILED THIS MOTION AS A RESULT OF THE PLAINTIFF  
DISMISSING, THIS WEEK, ITS LAWSUIT.

MR. THOMPSON, WHO IS ALSO A MEMBER OF THE  
BAR, IS THE PRESIDENT OF OVERLAND PROPERTIES, INC,  
AND IS THE MANAGING PARTNER OF HAWTHORNE MILL.

I THOUGHT IT MIGHT BE HELPFUL, YOUR HONOR, IF  
HE COULD RECITE THE FACTS, SINCE HE HAS PERSONAL  
KNOWLEDGE OF BOTH LAWSUITS, SINCE HE WAS INVOLVED  
IN BOTH LAWSUITS.

OR I CAN GO THROUGH THAT. I HAVE TRIED TO  
SET THEM FORTH FOR, YOUR HONOR.

THE COURT: DO YOU HAVE ANY OBJECTION TO  
MR. THOMPSON RECITING SOME THINGS?

MR. CHAGARIS: AS LONG AS I HAVE THE RIGHT TO  
CROSS.

THE COURT: YES. GO AHEAD, MR. THOMPSON.

MR. THOMPSON: MAY IT PLEASE THE COURT.

THE ENTITY NAMED OVERLAND PROPERTIES IS A  
LITTLE SMALL REAL ESTATE FIRM, NO LONGER IN

BUSINESS, SIGNED A CONTRACT WITH K.A. HOLDINGS TO PURCHASE SOME PROPERTIES THAT K.A. HOLDINGS DID NOT EVEN OWN. IT WAS REAL ESTATE ON HAWTHORNE LANE IN THE YEAR 2001.

THAT PURCHASE HAD, PURCHASE AGREEMENT, AND IT CLOSED ON OCTOBER 31st of 2001.

Part of that contractual agreement, which is in the evidence as an exhibit through the pleadings, allowed the selling party two weeks to remove goods from a major portion of the property.

They were also entitled to keep goods for approximately four months on a remaining portion of the property under the contract.

They had exactly two weeks under the contract in which to do so.

After two weeks went by, we asked them what their intentions were.

They indicated they were going to move it when they were jolly well ready. That's my characterization of it.

We wrote them a letter, which is also in evidence as an exhibit.

THE COURT: This letter is to K.A. Holdings?

MR. THOMPSON: Yes, sir, K.A. Holdings.

Let me just say for the record, K.A. Holdings

BROUGHT THE PROPERTY AT FORECLOSURE SALE, SOMETIME IN OCTOBER, AND THEN SOLD THE PROPERTY.

IF YOU'RE THINKING HOW DID THEY BUY IT AT FORECLOSURE SALE, WERE REALLY IN POSITION TO SIGN THE CONTRACT AND SELL IT IN THE FIRST PLACE, THEY WEREN'T.

A THIRD ENTITY NAMED HANFORD CREATIONS, INC, OWNED THE PROPERTY OF RECORD. THEY SIGNED A MEMORANDUM OF CONTRACT, THAT COMPANY, HANFORD CREATIONS, SIGNED A MEMORANDUM OF CONTRACT. BECAUSE AT THE TIME WE ENTERED INTO THE CONTRACT TO BUY THE PROPERTY, OF RECORD OWNER WAS SOMETHING CALLED HANDFORD CREATIONS OR HANDFORD, INC.

HANDFORD AS THE TITLED OWNER WAS FORECLOSED ON, AND K.A. HOLDINGS WAS THE PURCHASER AT THE FORECLOSURE SALE.

THEY THEN CONVEYED TITLE, WHICH WE HAVE INSURANCE FOR, AT THE CLOSING ON OCTOBER 31ST.

BY LETTER OF NOVEMBER 27TH I WROTE TO K.A. HOLDINGS IN CARE OF THEIR ATTORNEY JOHN MCNEIL WHO IS A CHARLOTTE ATTORNEY, SAYING, "GENTLEMEN, THIS LETTER IS BEING SENT OVERNIGHT, BY OVERNIGHT DELIVERY, TO ADVISE YOU THAT K.A. HOLDINGS HAS BREACHED ONE OR MORE OF THE POST CLOSINGS OBLIGATIONS OF SELLER AS CONTAINED IN SECTION



THREE OF THE CONTRACT.

"OBLIGATIONS THAT HAVE BEEN BREACHED ARE AS  
FOLLOWS:

"SELLER HAS FAILED TO MOVE OR REMOVE  
SUBSTANTIALLY, ALL OF ITS PROPERTY FROM THE  
PORTIONS OF THE BUILDING IT WAS TO VACATE WITHIN  
TWO WEEKS AFTER CLOSING.

"AND SELLER HAS FAILED TO REMOVE RELATED  
DEBRIS FROM THESE PREMISES AS WELL.

"SPECIFICALLY, MORE THAN 10 DAYS PASSED THE  
NOVEMBER 14, 2001 DEADLINE FOR REMOVAL OF PROPERTY  
AND DEBRIS THAT REMAIN LARGE AND SUBSTANTIAL  
QUANTITIES OF REMNANTS, INCLUDING BOXED INVENTORY,  
AND UNBOXED MERCHANDISE, AND AN ASSORTMENT OF  
BUSINESS RELATED MATERIAL, INCLUDING SHELIVING,  
OFFICE FURNITURE AND DISPLAY STANDS AND  
ACCESSORIES.

"IN VIEW OF SUCH BREACHES, HAWTHORNE MILL,  
L.L.C., THE BUYER, IS HEREBY REQUESTING THAT THE  
SECURITY FUND BE RELEASED TO BUYER, PURSUANT TO  
THE TERMS OF SECTION TWO OF THE ESCROW AGREEMENT  
WHICH WAS EXECUTED CONTEMPORANEOUSLY WITH THE  
CLOSING OF THIS TRANSACTION.

"A COPY OF THIS LETTER IS BEING SENT TO THE  
ESCROW AGENT."

SEVERAL DAYS AFTER THAT LETTER, THERE WAS NO FORMAL REPLY OR RESPONSE OR OBJECTION TO THE DISBURSEMENT OF THE ESCROW FUNDS.

THE ESCROW AGENT WAS TO BE INFORMED BY 48 HOURS OR TWO FULL BUSINESS DAYS AFTER NOTICE.

AFTER THREE FULL BUSINESS DAYS THERE WAS SOME CONVERSATION BETWEEN MR. MCNEIL AND THE ESCROW AGENT, I AM TOLD BY THE ESCROW AGENT.

BUT THAT WAS OUTSIDE THE TIME FOR LODGING AN OBJECTION IN WRITING UNDER THE TERMS OF THE ESCROW AGREEMENT.

THE ESCROW MONEY WAS THEN DISBURSED TO HAWTHORNE MILL, THE BUYER.

SUBSEQUENTLY, IN LATER PART OF 2001, DECEMBER, SPECIFICALLY. ON DECEMBER THE FIFTH, I WROTE A LETTER TO K.A. HOLDINGS, ATTENTION TO SOMEONE NAMED BRUCE ADLER (PHONETIC SPELLING).

I SAID, "AS YOU KNOW, CONSIDERABLE AMOUNTS OF PROPERTY AND DEBRIS REMAIN IN AND ABOUT THE VACATED PORTIONS OF THE OLD HANDFORD'S FACILITY.

"K.A. HOLDINGS HAD TWO WEEKS AFTER CLOSING UNDER THE CONTRACT TO REMOVE ALL OF ITS PROPERTY.

"FURTHERMORE THE NEW OWNERSHIP PERMITTED YOUR OPERATIVES AN ADDITIONAL PERIOD OF TIME IN WHICH TO ACCOMPLISH YOUR OBLIGATIONS UNDER THE CONTRACT.

"HOWEVER, YOUR REMOVAL EFFORTS HAVE NOT MET EVEN THAT EXTENDED TIMETABLE.

"ACCORDINGLY, PLEASE TAKE NOTE" THAT THIS IS REFERRED TO A PIECE OF VEHICLE, "THE WHITE VAN PARKED IN THE COURTYARD, IS IN THE WAY. IF YOU'RE INTERESTED IN HANDLING THIS REMOVAL YOURSELVES, PLEASE LET ME KNOW. WE'RE WILLING TO ACCOMMODATE YOU ON THIS AS A COURTESY, UP TO DECEMBER 14.

"AFTER THAT DATE WE WILL BE FORCED TO TAKE STEPS OURSELVES TO HAVE THE VAN RELOCATED."

THE VAN IS NOT REALLY RELEVANT TO ANYTHING IN THIS CASE, OTHER THAN SIMPLY TO SHOW THE COURT THE COURSE OF ACTION SUBSEQUENT TO THE FORFEITURE OF THE ESCROW DEPOSIT.

FINALLY, ON DECEMBER 13TH, 2001, I WROTE TO MR. BRUCE ADLER, K.A. HOLDINGS WITH A COPY TO C.J. DIVEN (PHONETIC SPELLING) WHO I WAS INFORMED WAS HIS ATTORNEY.

THE COURT: WHEN WAS THIS?

MR. MORRISON: EXCUSE ME. DECEMBER 13TH, 2001.

THE COURT: ALL RIGHT. THANK YOU. GO AHEAD..

MR. THOMPSON: THIS IS ALSO IN EVIDENCE, YOUR HONOR, EXHIBIT 5.

MR. MORRISON: IT'S NOT IN EVIDENCE. THOSE

WERE GOING TO BE OUR EXHIBITS.

MR. THOMPSON: THESE WERE TO BE OUR EXHIBITS  
AT TRIAL. THEY ARE NOT IN EVIDENCE. I APOLOGIZE.  
I THOUGHT THEY WERE ATTACHED TO OUR ANSWER.

MR. MORRISON: THE CONTRACTS ARE ATTACHED TO  
THE PLEADINGS, THE LETTERS ARE NOT.

MR. THOMPSON: I APOLOGIZE, YOUR HONOR. I  
MISSTATED.

THE COURT: GO AHEAD. EXCUSE ME.

MR. THOMPSON: THE TITLE OF THIS LETTER WAS,  
"OCCUPANCY IN EXCESS OF ALLOTTED SPACE, AND  
NONMOVEMENT OF VAN.

"YESTERDAY MR. C.J. DIVEN INFORMED ME OVER  
THE PHONE, THAT YOU WERE PREPARED TO IMMEDIATELY  
MOVE ALL OF YOUR MERCHANDISE INTO AN AREA OF NO  
MORE THAN 30,000 SQUARE FEET.

"IN VIEW OF THE FACT THAT YOUR OPERATION IS  
CURRENTLY OCCUPYING IN EXCESS OF 50,000 SQUARE  
FEET OF SPACE, IN VIOLATION OF YOUR CONTRACTUAL  
OBLIGATION.

"MR. DIVEN WAS IN TURN ADVISED THAT WHICHEVER  
WAREHOUSE SPACE YOU OCCUPIED, WOULD BE FINE WITH  
THE OWNERSHIP, BUT YOU NEEDED TO ADVISE US  
IMMEDIATELY OF THE SPACE YOU WISHED TO CONTINUE TO  
UTILIZE, IF YOUR ON-SITE EMPLOYEES INDICATION THAT

YOU WOULD BE UTILIZING THE LARGER WOODEN WAREHOUSE IS NOT CORRECT."

IN OTHER WORDS WE WERE TOLD WHAT SPACE THEY WANTED BY AN ON-SITE EMPLOYEE OF THE HANDFORD'S ORGANIZATION. BUT WE WERE TRYING TO FIND OUT IF THAT'S IN FACT WHAT HER BOSS IN NEW JERSEY, NEW YORK WAS WANTING TO DO.

"GIVEN THAT MR. DIVEN SAID YOU WERE READY TO START ON THURSDAY, TODAY, DECEMBER 13TH, THIS IS TO ADVISE YOU THAT WE NEED YOUR WRITTEN CONFIRMATION BY 5:00 P.M. TODAY THAT YOUR PERSONNEL AND OR SUBCONTRACTORS WILL BEGIN TO MOVE AND CONSOLIDATE MERCHANDISE INTO CONTRACTUALLY PERMITTED SPACE, NO LATER THAN FRIDAY, DECEMBER 14. AND THAT SUCH OPERATIONS WILL CONTINUE ON A FULL TIME BASIS UNTIL COMPLETED, PRESUMABLY EARLY NEXT WEEK.

"ABSENT AFFIRMATIVELY CLARIFYING A TIMELY CORRESPONDENCE IN THIS REGARD, AND IN VIEW OF THE FACT THAT WE STILL HEARD NOTHING FROM YOU IN GETTING THE VAN BEING MOVED, HAWTHORNE MILL, L.L.C. WILL BE LEFT WITH NO CHOICE BUT TO TAKE APPROPRIATE LEGAL STEPS TO SECURE ITS PROPERTY AND CONTRACTUAL RIGHTS WITH RESPECT TO ALL RELEVANT SPACE AND CONTENTS."

MR. CHAGARIS: YOUR HONOR, I WILL OBJECT.  
THE PURPOSE OF THIS HEARING, ANYTHING THAT'S NOT  
INTO EVIDENCE ALREADY IN THE COURT HAS NO  
RELEVANCE.

THE COURT: ALL RIGHT. WELL I'LL HEAR FROM  
YOU WHEN IT COMES YOUR TIME.

MR. CHAGARIS: THANK YOU.

THE COURT: THANK YOU.

GO AHEAD, SIR.

MR. THOMPSON: THEREAFTER WE HEARD NOTHING  
MORE FROM THESE PEOPLE IN NEW YORK, AS A  
REPRESENTATIVE OF HAWTHORNE MILL, L.L.C. THE  
ORIGINAL PURCHASER OF THE MILL.

THE NEXT WE HEARD WAS SOME OSTENSIBLE MOTION  
OR NOTICE ON THEIR PART THAT THEY WANTED TO HAVE  
AN ARBITRATION OF THE FORFEITURE OF THE ESCROW  
MONEY.

WE INDICATED THAT UNDER THE CONTRACT, THEY  
HAD TWO DAYS IN WHICH TO OBJECT, IN WHICH CASE  
ARBITRATION WOULD BE HELD, WAS APPROPRIATE, AND  
WOULD BE BINDING.

THEY FAILED TO DO SO, WHICH IS WHY THE ESCROW  
MONEY WAS ALREADY RELEASED BY THE FIRM OF MOORE  
AND VAN ALLEN, THE ESCROW AGENTS.

SO THERE WAS NO ARBITRATION LEFT UNDER THE

ARBITRATION PROVISION OF THE ESCROW AGREEMENT.

NOTWITHSTANDING THAT, THEY UNILATERALLY  
STARTED, APPARENTLY, WE DON'T KNOW, BUT APPARENTLY  
THEY HAD SOME KIND OF AN ARBITRATION IN NEW YORK,  
WE NEVER ATTENDED. WE TOLD THEM WE WOULD NOT  
ATTEND. WE TOLD THEM THERE WAS NO JURISDICTION.

EIGHT MONTHS LATER THEY BROUGHT AN ACTION IN  
THE SUPERIOR COURT OF MECKLENBURG COUNTY TO  
ENFORCE THEIR ARBITRATION AWARD.

JUDGE MARCUS JOHNSON, AS MR. MORRISON'S BRIEF  
INDICATES, IN THE COLLOQUIALISM, TOSSED THAT OUT  
WITH PREJUDICE.

AND HIS ORDER IS DATED DECEMBER THE 12TH,  
FILED OF RECORD, DECEMBER THE 12TH. IT CAME ON  
FOR HEARING ON NOVEMBER THE 21ST, 2002, BEFORE  
JUDGE JOHNSON, MARCUS JOHNSON. THAT WAS WITH  
PREJUDICE.

MAY I TENDER THIS TO THE COURT? I THINK IT'S  
IN THE RECORD.

THE COURT: YES.

MR. MORRISON: YOUR HONOR, THAT IS ATTACHED  
TO ONE OF THE EARLIER MOTIONS OF RECORD.

THE COURT: DO YOU WANT TO SEE THIS?

MR. CHAGARIS: AS LONG AS IT'S THE SAME  
ORDER.

THE COURT: IT'S DEFENDANT'S EXHIBIT B AND  
IT'S DATED --

MR. CHAGARIS: I TRUST DALE, YOUR HONOR.

THE COURT: DECEMBER 10, '02. IS THAT THE  
ONE YOU HAVE?

MR. CHAGARIS: THAT SOUNDS ABOUT RIGHT.

THE COURT: ALL RIGHT.

MR. THOMPSON: MR. CHAGARIS WAS THE ATTORNEY  
OF RECORD IN THAT PROCEEDING. HE ENTERED NOTICE  
OF APPEAL AT THE END OF THAT HEARING AFTER JUDGE  
JOHNSON MADE HIS RULING VERBALLY. NO APPEAL WAS  
EVER PERFECTED OR TAKEN.

THEREAFTER, WE WERE SERVED WITH ANOTHER  
LAWUIT, WE BEING, HAWTHORNE MILL, FILED AROUND  
JULY THE 24TH, '03.

I FRANKLY DON'T RECALL THE CIRCUMSTANCES OF  
THE SERVICE. BUT WE'RE NOT CHALLENGING THAT.

THE ENTITIES THAT WERE SERVED WERE OVERLAND  
PROPERTIES, JOINED AND HAWTHORNE MILL, L.L.C.

THAT COMPLAINT ESSENTIALLY RELITIGATED, IN  
OUR OPINION, AND IT HAS BEEN SO RULED NOW BY JUDGE  
BRIDGES, JUDGE FORREST BRIDGES, ATTEMPTED TO  
RELITIGATE ISSUES THAT WERE RAISED IN THE  
ARBITRATION, AND WHICH WERE DISMISSED FOR LACK OF  
JURISDICTION BY JUDGE JOHNSON.



ONCE THIS CASE WAS FILED, WE IMMEDIATELY,  
BASED ON THE VERIFIED COMPLAINT OF SOMEONE NAMED  
CARL MANCINI, (PHONETIC SPELLING) ASKED TO DEPOSE  
MR. MANCINI.

THE REASON FOR THAT, FRANKLY, YOUR HONOR, I  
NEVER SEEN, HEARD OF, MET OR OBSERVED ANYONE BY  
THAT NAME IN ANYTIME IN CHARLOTTE, NORTH CAROLINA.

THERE IS NO WAY MR. MANCINI COULD HAVE ANY  
PERSONAL KNOWLEDGE OF ANY OF THE TRANSACTIONS WE  
WERE TALKING ABOUT, IN MY OPINION.

WE FELT ONCE WE DEPOSED HIM, AND THAT WAS  
ESTABLISHED OF RECORD, THE COMPLAINT WOULD FAIL  
FOR LACK OF PROPER VERIFICATION.

THE COURT: WHEN YOU SAY THE COMPLAINT, YOU  
MEAN THE COMPLAINT IN THIS CASE?

MR. THOMPSON: THE ONE IN JULY 2002.

THE COURT: THE ONE WE'RE HERE ABOUT NOW?

MR. MORRISON: YES, SIR.

MR. THOMPSON: YES, SIR. THAT IS CORRECT,  
YOUR HONOR. FILED JULY 24TH, '03. I'M SORRY IF  
MY DATES ARE WRONG. JULY 24 OF 2003.

AND THEREAFTER, AS MR. MORRISON HAS INDICATED  
IN THE AFFIDAVIT IN BRIEF THAT HAS BEEN FILED IN  
SUPPORT OF THIS MOTION, MR. CHAGARIS TOLD US ON  
THE EVE OF THE SCHEDULED DEPOSITION OF

MR. MANCINI, THAT HE DID NOT KNOW ANYTHING ABOUT THE CASE AND WOULD NOT BE THE PROPER WITNESS TO BE DEPOSED; WHICH WE KNEW.

HE THEN TENDERED OR SAID THAT HE HAD SOMEONE ELSE NAMED JOHN CULASAK (PHONETIC SPELLING). NOW I HAVE HEARD THAT NAME.

BECAUSE AS A PIECE OF EVIDENCE THAT WE HAVE NOT OFFERED YET, BUT WE WILL OFFER IT IF IT'S EVER TRIED. WE HOPE IT WON'T BE.

THE COURT: WELL, IT'S NOW BEEN DISMISSED, HASN'T IT?

MR. THOMPSON: EXCUSE ME?

THE COURT: IT'S NOW BEEN DISMISSED HASN'T IT?

MR. THOMPSON: THEY INDICATED THEY ARE GOING TO FILE AGAIN. THAT'S WHY WE'RE HERE, TO SOME EXTENT. WE WANTED TO MAKE SURE THAT THIS DOESN'T GET TRIED AGAIN, IF POSSIBLE, OR FILED AGAIN, IF POSSIBLE. OF COURSE WE CAN'T CONTROL THAT, OBVIOUSLY.

BUT WE HOPED THAT THE COURT WOULD -- YOU UNDERSTAND WHY WE'RE HERE. I HOPE IN JUST A FEW MORE MINUTES I'LL MAKE OUR POSITION FULLY CLEAR, I HOPE.

SOMEONE NAMED MR. CULASAK SIGNED A

HANDWRITTEN NOTE ADDRESSED TO HAWTHORNE MILLS,  
L.L.C. IN CARE OF ME, SAYING THAT, "I, JOHN  
CULASAK, V.P. OF K.A. HOLDINGS IN NEW YORK, AGREE  
THAT K.A. HOLDINGS SHALL HAVE VACATED ALL THE  
PREMISES AT 1111 HAWTHORNE LANE BY 5:00 P.M.  
APRIL 12TH, 2002.

"I AM AUTHORIZED TO SIGN THIS STATEMENT WHICH  
IS DONE IN LIEU OF LITIGATING APPEAL OF EVICTION  
PROCEEDING."

THAT WAS SIGNED ON MARCH 25TH, 2002. THAT  
WAS MORE THAN THREE WEEKS AFTER THEY WERE SUPPOSE  
TO BE OUT OF THE PREMISES TO BEGIN WITH.

IT'S A SIDEBAR, BUT WE FILED A MOTION FOR  
EVICTION, SINCE THEY DID NOT HONOR THEIR AGREEMENT  
TO WITHDRAW OTHER THAN A SMALL PORTION OF THE  
MILL, FOR THE FOUR MONTH PERIOD. SO WE MOVED TO  
EVICT THEM. WE GOT AN EVICTION NOTICE IN THE  
MAGISTRATE'S COURT. IT WAS APPEALED.

AND THIS WAS AN INFORMAL AGREEMENT WHEN THEY  
WOULD BE OUT, SO THAT WE DIDN'T HAVE TO GO THROUGH  
WITH FURTHER EVICTION PROCEEDINGS IN MARCH OF  
2002.

I NEVER MET MR. CULASAK. THIS WAS PROVIDED  
BY MR. MCNEIL.

MR. MCNEIL, HE OBTAINED IT, I BELIEVE FROM

MR. CULASAK.

I HAVE HEARD OF MR. CULASAK. AND I BELIEVE  
I'VE SEEN HIM ON ONE OCCASION.

I WAS INFORMED THAT'S WHO I OBSERVED ON OR  
ABOUT THE PREMISES. I DON'T BELIEVE I'VE EVER HAD  
ANY CONVERSATION WITH HIM.

SUBSEQUENTLY, AS MR. MORRISON'S BRIEF  
INDICATES, MEMORANDUM IN SUPPORT OF OUR MOTION  
INDICATES, THE DEPOSITION OF MR. CULASAK WAS DULY  
SCHEDULED, BUT A COUPLE DAYS BEFORE THAT,  
PLAINTIFF'S ATTORNEY INDICATED THAT HE WOULD NOT  
BE ATTENDING HIS DEPOSITION.

THE COURT: WOULD THAT BE MR. CHAGARIS?

MR. THOMPSON: YES, SIR. THAT WOULD BE  
MR. CHAGARIS.

I'M NOT SURE HOW -- MY COUNSEL HAS CAUTIONED  
ME TO REFER TO HIM AS PLAINTIFF'S ATTORNEY RATHER  
THAN BY HIS FIRST NAME.

BUT YES, SIR, MR. CHAGARIS HAS BEEN THE  
ATTORNEY AT ALL TIMES RELEVANT, AS FAR AS I KNOW,  
SINCE THERE WAS A PROCEEDING FILED IN 2002.

PRIOR TO THAT TIME, THE ONLY ATTORNEY I WAS  
AWARE OF, WAS A NEW YORK ATTORNEY NAMED C.J.  
DIVEN. THERE WERE NO FORMAL LEGAL PROCEEDINGS IN  
NORTH CAROLINA.

THE COURT: NOW TELL ME ABOUT MR. MCNEIL.  
YOU SAY HE IS A LOCAL LAWYER?

MR. THOMPSON: HE IS A LOCAL LAWYER.  
MR. MCNEIL WAS INVOLVED, TO MY KNOWLEDGE, IN THE  
FORECLOSURE PROCEEDING AND REPRESENTED K.A.  
HOLDINGS AT THE FORECLOSURE PROCEEDING.

HE MAY HAVE BEEN, AND I APOLOGIZE FOR MY LACK  
OF RECOLLECTION AT THIS POINT. HE MAY HAVE BEEN  
THE TRUSTEE IN FORECLOSURE.

IT MAY BE THAT HE ACTUALLY EXECUTED THE  
DEED --

THE COURT: WHO DOES HE PRACTICE WITH? I'M  
TRYING TO PLACE HIM, IS THE REASON WHY I'M ASKING.

MR. THOMPSON: HE GOES BY THE NAME OF JACK  
MCNEIL. HE DOES ALMOST EXCLUSIVELY REAL ESTATE.  
HIS OFFICE WAS, AT THE TIME, OUT ON FAIRVIEW.  
HE'S OLDER THAN I AM. I BELIEVE HE WAS AN  
ATTORNEY WHEN I WAS FIRST ADMITTED TO THE BAR.  
BUT I CAN'T SAY SPECIFICALLY THE NAME OF HIS FIRM  
RIGHT OFF THE TOP OF MY HEAD, AND I APOLOGIZE --

THE COURT: ALL RIGHT.

MR. THOMPSON: -- FOR MY LACK OF RECOLLECTION  
ON THAT.

THE FACTUAL SETTING THEN IS THAT WE -- AFTER  
WE HAD TWO SCHEDULED DEPOSITIONS, BOTH OF WHICH

WERE NOT ATTENDED WITH ADVANCE NOTICE, BUT BRIEF  
ADVANCE NOTICE, THE OFFER WAS MADE AS  
MR. MORRISON'S MEMO ASSERTS BY MR. CHAGARIS, THAT  
THEY WOULD PAY OUR WAY TO NEW YORK FOR A  
DEPOSITION.

BUT THERE WAS NEVER ANY EFFORT MADE TO DO SO,  
TO MY KNOWLEDGE.

NOR DID WE PARTICULARLY FEEL THAT WE SHOULD  
BE GOING TO NEW YORK TO DEFEND A CASE FILED IN  
MECKLENBURG COUNTY.

THERE WAS A MOTION FILED TO DISMISS THE CASE.  
AND JUDGE ROBERT JOHNSTON HEARD THAT IN EARLY  
JANUARY OF 2004.

THE COURT: YOU TALKING ABOUT THIS CASE?

MR. THOMPSON: YES, SIR.

THE COURT: ALL RIGHT.

MR. THOMPSON: HE DID NOT -- HIS RULING WAS  
IN ABEYANCE UNTIL A LETTER WAS WRITTEN IN NOVEMBER  
OF '04.

THE CASE HAD ALREADY APPEARED ON THE TRIAL  
CALENDAR SEVERAL TIMES. WAS NOT, OBVIOUSLY, HEARD  
OR EVEN CALLED, BECAUSE OF THE CASE -- BECAUSE  
JUDGE JOHNSTON'S RULING MIGHT HAVE BEEN  
DISPOSITIVE.

HE INDICATED IN A LETTER, WHICH I BELIEVE

MR. MORRISON HAS MADE AVAILABLE TO THE COURT,  
DATED NOVEMBER 9, 2004 ADDRESSED TO MR. MORRISON  
AND MR. CHAGARIS.

"I AM FRUSTRATED THAT NONE OF US HAS BEEN  
ABLE TO LOCATE A CASE ON POINT. THOUGH I'M  
CONVINCED ONE EXISTS, AND COULD BE FOUND IF I HAD  
MORE LEXIS SKILLS.

"IN ANY EVENT, I AM DENYING THE MOTION TO  
DISMISS.

"IF ADJUSTMENTS NEED TO BE MADE IN THE  
SCHEDULING ORDER OR TRIAL DATE, PLEASE LET ME  
KNOW."

MR. CHAGARIS HAS NEVER PREPARED OR SUBMITTED  
TO OUR KNOWLEDGE, ANY ORDER BASED ON THIS LETTER  
OF JUDGE JOHNSTON.

SUBSEQUENTLY, MR. MORRISON AT MY REQUEST, AND  
I THINK PROBABLY ON HIS ADVISE, FILED A MOTION FOR  
SUMMARY JUDGMENT, AND WAS HEARD THE WEEK  
SUBSEQUENTLY TO THE FIRST TRIAL SETTING, AFTER  
JUDGE JOHNSTON'S LETTER.

FIRST TRIAL SETTING WAS IN THE LATTER PART OF  
JANUARY.

JUDGE BRIDGES WAS THE PRESIDING JUDGE. HE  
INDICATED THAT HE WOULD BE WILLING TO HAVE THE  
CASE CALLED FOR TRIAL ON THURSDAY OF THAT WEEK.

HE WOULD RULE ON THE MOTIONS AND THEN GO ON TO TRIAL.

MR. CHAGARIS INDICATED THAT HE DIDN'T WANT TO DO THAT BECAUSE HIS WITNESSES WERE QUOTE, FROM OUT OF TOWN.

WE WERE HERE, READY TO GO.

THE COURT: I CAN FIND THIS OUT LATER, MAYBE YOU KNOW AND CAN TELL ME, WHERE WERE MR. CHAGARIS WITNESSES FROM?

MR. THOMPSON: EXCUSE ME?

THE COURT: WHERE WERE MR. CHAGARIS' WITNESSES FROM? WHERE WERE THEY LOCATED?

MR. THOMPSON: ALL I KNOW IS THAT K.A. HOLDINGS IS SUPPOSEDLY A NEW YORK CORPORATION.

ALL I KNOW IS THAT THE CONVERSATIONS I'VE HAD LONG DISTANCE WERE WITH PEOPLE IN NEW JERSEY AND WITH C.J. DIVEN IN NEW YORK.

THIS WAS PRIOR TO CLOSING, AND IN THE MONTH THAT I READ YOU SOME CORRESPONDENCE, MONTH OF NOVEMBER, EARLY DECEMBER OF 2001.

MY PHONE CALLS THAT I MADE, WHICH WERE FEW, BUT FEW THAT I MADE, WERE TO NEW YORK AND OR NEW JERSEY.

I HAVE NO KNOWLEDGE OF WHO ANY OF THESE PEOPLE ARE.



THEY HAD AN EMPLOYEE OF THE OLD COMPANY, HANDFORD'S CREATIONS, WHO WAS ON PREMISES IN CHARLOTTE. IS A CHARLOTTE RESIDENT, TO MY KNOWLEDGE. I'VE SEEN NO SUBPOENA FOR HER. THERE'S NO SUBPOENA IN THE FILE FOR HER. I DON'T KNOW HOW THEY INTENDED TO HAVE HER, IF ANYONE, AS A WITNESS.

QUITE FRANKLY, THE ONLY WITNESS THAT I KNOW OF THAT COULD COMPREHENSIVELY TELL WHAT HAS OCCURRED, IF THERE WERE ANY FACTS AT ISSUE, WOULD BE SOMEONE THAT I'M ASSOCIATED WITH.

AND THAT'S REALLY THE KEY OF THIS MATTER.

THE HEART OF THIS MATTER IS, THERE IS NO FACTUAL BASIS, THERE IS NO GROUNDING IN SUBSTANTIAL FACT AT ALL, FOR THE CLAIMS THEY HAVE RAISED.

AT THIS POINT, THE ONLY CLAIM LEFT BEFORE THIS COURT, IS THAT THEY COULD REFILE, IF THEY CAN REFILE AT ALL, WOULD BE THE CLAIM FOR TORTIOUS CONVERSION OF GOODS.

THAT CLAIM WAS ALLOWED TO STAND BY JUDGE BRIDGES IN HIS RULING.

WE DON'T DISAGREE WITH THE LEGAL CORRECTNESS OF THAT RULING, IN TERMS OF WHAT THE JUDGE HAD IN FRONT OF HIM.

BUT OUR POSITION IN FRONT OF YOU, SIR, IS  
THIS:

THEY HAVE HAD THREE YEARS TO PROVE THEIR CASE  
OR NOT, ON THAT ISSUE.

THEY BROUGHT IN ALL KINDS OF ALLEGATIONS  
WHICH HAD BEEN DISMISSED, TWICE NOW.

AND RES JUDICATA DID APPLY, IN MY MIND, BASED  
ON JUDGE BRIDGES' MOST RECENT RULINGS.

THEREFORE, SOME OF THEIR PLEADINGS WERE  
CLEARLY, BARRED BY LAW, AS WELL AS FACT.

THERE IS ONE FACTUAL ISSUE WHICH THEY SUBMIT  
THEY STILL MAY BRING ANOTHER CASE, ANOTHER LAWSUIT  
ON, THAT'S CONVERSION OF GOODS.

THE FACTS FROM OUR STANDPOINT, OBVIOUSLY  
MAYBE THEY WILL TESTIFY DIFFERENTLY, BUT ALL WE  
WOULD SAY IS, GOODS THAT REMAINED ON THE PREMISES  
THAT WERE TO BE VACATED IN TWO WEEKS, AND WHICH WE  
GAVE THEM MORE THAN FOUR WEEKS TO VACATE.

AND WHICH WE THEN RECEIVED ESCROW DEPOSIT FOR  
FAILURE TO COMPLY, WERE DISPOSED OF BY AN ENTITY  
ON BEHALF OF ONE OF THESE ENTITIES THAT'S NAMED IN  
THE LAWSUIT.

YES, SOME GOODS, AND MOSTLY TRASH, OF  
QUESTIONABLE VALUE, WAS NO LONGER UNDER THEIR  
CONTROL. WE ARE NOT IN ANYWAY HIDING FROM THAT

FACT.

THE CONTRACT SPECIFICALLY SAYS, AND DALE MORRISON IS UNDERLINING FOR ME, THE SPECIFIC PROVISION OF THE CONTRACT TO PURCHASE OF REAL ESTATE, IT SAYS IN SECTION THREE, SUBSECTION B, "PERSONAL PROPERTY LEFT ELSEWHERE ON THE PREMISES MORE THAN TWO WEEKS AFTER CLOSING, SHALL BEEN DEEMED ABANDONED."

WE ADMIT THAT ABANDONED PROPERTY, MOST OF IT JUNK, WE HAD TO DISPOSE OF AT OUR COST, WHICH WE DID.

THE COURT: WHAT ABOUT THE TRUCK?

MR. THOMPSON: PARDON?

THE COURT: WHAT ABOUT THE TRUCK?

MR. THOMPSON: THE TRUCK, THEY GOT THEY TRUCK. THEY GOT RID OF THE TRUCK. THEY CAME AND PICKED UP -- ACTUALLY LET ME RESTATE THAT.

WE HAD TO HAVE THE TRUCK TOWED. BUT THEY HAVE THE TRUCK, TO MY KNOWLEDGE. I NEVER HEARD ANYMORE ABOUT IT.

THE TRUCK WAS TOWED BECAUSE THEY NEVER CAME AND GOT IT. IT WAS TOWED BY A TOWING SERVICE, LICENSED TOWING SERVICE IN MECKLENBURG COUNTY. THEY CAME AND PUT IT ON THEIR LOT. I PRESUME THE TRUE OWNER OF THAT TRUCK --

THE COURT: I WAS JUST --- OF COURSE I DON'T  
KNOW IF IT'S RELEVANT.

MR. THOMPSON: IT'S NOT. I UNDERSTAND.

BUT I DO THINK TO SOME EXTENT IT IS RELEVANT.  
AS I READ THE STATUTE, AND MR. MORRISON IS HELPING  
ME OUT HERE, BECAUSE I DON'T PRACTICE LAW. I AM  
STILL LICENSED. STILL CURRENT IN MY LICENSE. I  
WANT THAT TO BE CLEAR WITH THE COURT.

BUT I WOULD LIKE TO SAY THAT WE BELIEVE THAT  
MR. CHAGARIS, IN MY OPINION, AT LEAST, THIS IS MY  
ASSERTION, HAS NOT ADEQUATELY RESEARCHED THIS TO  
KNOW THAT THERE'S A GROUND FOR BRINGING THIS CASE.

IN FACT, CLEARLY A NUMBER OF GROUNDS OF LAW  
THAT HAVE ALREADY PRECLUDED A NUMBER OF THE CLAIMS  
THEY BROUGHT. AND HAS BEEN SO RULED BY TWO  
DIFFERENT SUPERIOR COURT JUDGES.

BUT NOW WE ARE HERE ON THE THIRD DAY, AND  
HE'S ASKING, HE'S ALREADY HAD IT DISMISSED  
VOLUNTARILY WITHOUT PREJUDICE, AND SUGGESTED TO US  
THAT HE INTENDS TO FILE AGAIN.

WE'VE EXPERIENCED CONSIDERABLE EXPERIENCE,  
MONEY WELL SPENT WITH GOOD ATTORNEYS, TO DEFEND  
OUR POSITION.

BUT WE BELIEVE THAT WE SHOULDN'T HAVE HAD TO  
EVER DEFEND IN THE FIRST PLACE.

I'VE LOST MY TRAIN OF THOUGHT TO SOME EXTENT.  
IF THE COURT HAS A SPECIFIC QUESTION, I'LL  
TRY TO ANSWER.

THE COURT: I DON'T HAVE A QUESTION. I THINK  
I UNDERSTAND. I'VE LOOKED AT MR. MORRISON'S  
MOTION. AND I SEE WHAT HE ASKED FOR IN THE WAY OF  
RELIEF.

MR. MORRISON, YOU HAVE ANYTHING YOU WANT TO  
ADD TO WHAT MR. THOMPSON HAS SAID?

MR. MORRISON: YOUR HONOR, I DON'T WANT TO BE  
REPETITIVE, BUT IT WAS OFFENSIVE THAT WE HAD A  
VERIFIED COMPLAINT.

AND IT WAS OFFENSIVE THAT THEY KNEW THEY HAD  
A NONJUSTICABLE ISSUE, AT LEAST ON THE AWARD, OF  
THE ARBITRATION AWARD OF \$50,000.

YET, WHEN GIVEN MORE THAN ADEQUATE  
OPPORTUNITY TO TAKE A DISMISSAL, IN THE SECOND  
LAWSUIT, THEY PERSISTED IN GOING FORWARD.

AND I THINK THE CASE LAW SAYS THAT THERE'S A  
DUTY UPON THE PLAINTIFF, EVEN IF IT SURVIVES A  
MOTION TO DISMISS, TO REVIEW ITS COMPLAINT AND SEE  
WHETHER IT HAS A JUSTICIABLE CAUSE OF ACTION.

THE COURT: THAT'S ONE OF THE PROVISIONS OF  
RULE 11.

MR. MORRISON: YES, SIR. THAT WAS GREATLY

OFFENSIVE.

THE OTHER ISSUE THAT I THINK MR. THOMPSON HAS HIT ON, IS THAT EVEN IF THE CONVERSION ISSUE SURVIVES SUMMARY JUDGMENT, I THINK THAT, YOU KNOW, WE NOW HAVE DONE THIS TWICE. WE'RE THROUGH IT TWO TIMES.

AS I INDICATED, I WAS TOLD -- AND NO DISRESPECT TO MR. CHAGARIS, HE INDICATED THAT HE DIDN'T WANT TO BE PART OF THE THIRD LAWSUIT. HE WAS GOING TO HAVE THIS MR. DIVEN OUT OF NEW YORK, WHO APPARENTLY IS ONE OF THE PRIME MOVERS ON BEHALF OF THE PLAINTIFF, TAKE OVER THE CASE AND GET HIM ADMITTED, SPECIALLY ADMITTED TO HANDLE THE CASE.

BUT THAT THEY WERE GOING TO FILE THIS A THIRD TIME. WE JUST DON'T WANT TO GO THROUGH THIS A THIRD TIME.

IT'S SO NEBULOUS, IT IS SO DIFFICULT TO GET THEM TO COOPERATE, AS FAR AS WHAT I WOULD EXPECT OF A NORMAL PROFESSIONAL RELATIONSHIP OF GETTING INFORMATION FOR SETTING FORTH A BASIS.

WHAT'S HAPPENING TO ME, BASED ON MY EXPERIENCE, IS MR. THOMPSON HAD A CONTRACT. BY THE WAY, THAT CONTRACT WAS BILATERAL.

THEY TOO COULD MAKE THAT DEMAND UPON MOORE

AND VAN ALLEN AND SAY, WE HAVE REMOVED THE  
PROPERTY, WRITE US A CHECK FOR THAT \$50,000.

MR. THOMPSON'S COMPANY WOULD HAVE HAD 48  
HOURS TO OBJECT FOR THAT MONEY, THAT \$50,000 WOULD  
HAVE WENT TO THEM.

SO -- AND THERE WAS A TIME OF THE ESSENCE  
CLAUSE.

WHY ANYONE WOULD SIGN A CONTRACT LIKE THAT,  
IS BEYOND MY IMAGINATION. BUT THAT'S WHAT THE  
PARTIES CONTRACTED TO. AND THESE WERE  
CORPORATIONS. WE'RE NOT DEALING WITH SOME SMALL  
CONSUMER.

SO FROM MY STANDPOINT OF THIS, THIS WHOLE  
THING HAS BEEN A GAME BY THE PLAINTIFF TO BLEED  
THE DEFENDANTS OF THAT \$50,000. MAKE THEM SPEND  
\$50,000 IN LEGAL FEES, SINCE THEY TOOK THAT  
\$50,000.

I JUST CONSIDER IT A VERY IMPROPER MOTIVE.

I THINK THE CASES THAT I PROVIDED THE COURT,  
AND I ALSO PROVIDED MR. CHAGARIS ON THE SAME DAY  
SHOW, THAT AN IMPROPER PURPOSE IS AN OBJECTIVE  
STANDARD THAT THE COURT MUST LOOK AT.

WHEN DOES IT JUST HAVE TO SHOW OR ARGUE OR  
INTEND THAT IT WAS HARASSMENT. THE COURT CAN LOOK  
AT THE TOTALITY OF THE CIRCUMSTANCES.

AND THE PLAINTIFF HAS A BURDEN OF COMING IN  
AND SHOWING THAT IT HAS A LEGAL RIGHT AND BASIS, A  
MERITORIOUS RIGHT AND BASIS TO BE IN COURT.

I WOULD SUBMIT THAT'S THE CRUX OF THIS CASE.  
THEY WANT TO MAKE MR. THOMPSON TO SPEND \$50,000 IN  
LEGAL FEES. THEY ARE WILLING TO GO ALL THE WAY TO  
MAKE HIM DO IT.

I WILL JUST TELL YOUR HONOR, AND IF THAT JUNK  
HAD VALUE, IT WAS ONLY IN THE VALUE OF -- ONLY IN  
THE EYES OF SOME UNUSUAL PERSON. IT WAS A FILTHY  
MESSY BIT OF BROKEN CHRISTMAS ORNAMENTS, DUMPED  
BOXES, IT WAS JUST AWFUL LOOKING.

I SUBMIT, THAT MR. THOMPSON SPENT FAR MORE  
MONEY THAN HE SHOULD HAVE, IN HAVING TO CLEAN IT  
UP. BUT THAT'S NEITHER HERE NOR THERE.

I'VE SAID ALL I HAVE TO SAY IN THIS, UNLESS  
YOUR HONOR HAS QUESTIONS.

THE COURT: I'LL HEAR FROM.

MR. MORRISON: IF MR. THOMPSON NEEDS TO  
ANSWER QUESTIONS OF MR. CHAGARIS, HE CERTAINLY  
WILL.

THE COURT: ALL MR. CHAGARIS I WILL HEAR FROM  
YOU ON THE MOTION OF FEES AND COSTS.

MR. CHAGARIS: YES, YOUR HONOR, FIRST OFF, I  
WOULD LIKE TO GET THE ORDER OF HOW THINGS



TRANSPIRED.

THE FIRST CASE WAS SIMPLY A MOTION TO AFFIRM AN ARBITRATION AWARD. WHICH IS THE PROCEDURE SET BY STATUTE, WHERE WE'RE TENDERING THIS TO THE COURT FOR ITS CERTIFICATION IN NORTH CAROLINA.

BOTH JUDGES HAD A PROBLEM WITH THE ARBITRATION AWARD, BECAUSE THE ARBITRATOR INCLUDED SOME VERY UNUSUAL -- IT WAS A STRANGE AWARD. AND IT LOOKED LIKE HE MAY HAVE EXCEEDED HIS AUTHORITY.

THE COURT: WHO WAS THE ARBITRATOR?

MR. CHAGARIS: A GENTLEMAN IN NEW YORK.

THE COURT: WHERE DID THE ARBITRATION TAKE PLACE?

MR. CHAGARIS: IN NEW YORK.

THE COURT: OKAY.

MR. CHAGARIS: AND JUDGE JOHNSON FOUND THAT, RIGHTLY OR WRONGLY, THAT WE SHOULD HAVE FILED A MOTION TO COMPEL THEM INTO ARBITRATION. THAT THE COURT DID NOT HAVE JURISDICTION, AND THAT HE WAS DISMISSING THAT OLD AWARD WITH PREJUDICE AND VACATING IT.

SO BASICALLY FOR PURPOSES OF NORTH CAROLINA, IT DOESN'T EXIST. WHICH IS FINE. WE CONSIDERED APPEALING IT.

BUT LOOKED AT IT, AFTER REVIEW OF THE AWARD,

IT WAS SUCH AN UNUSUAL AWARD, IT DIDN'T LOOK LIKE SOMETHING WORTH RISKING TO RALEIGH, BASED ON THE AWARD ITSELF.

SO WE BROUGHT A SECOND ACTION. WE DID NOT BRING A SECOND ACTION FOR THAT \$50,000 THAT WAS VACATED BY THE AWARD. THAT WAS DISMISSED. THE COURT MADE IT CLEAR, YOU CAN'T SUE OVER THAT. I'M GETTING RID OF IT IN ITS ENTIRETY.

THE COURT: WHAT WAS THRUST OF THE SECOND ACTION?

MR. CHAGARIS: SECOND ACTION WAS PRIMARILY A CONVERSION, DAMAGES FROM HAVING TO RE-LEASE THE FACILITY, ADDITIONAL FACILITY AND SPACE TO COVER THE DAMAGES, AND THE COST INCURRED ON THE BREACH OF THE CONTRACT, INCLUDING THE COST OF THE ARBITRATION.

THE FEES PAID TO THE ARBITRATION, PURSUANT TO THE CONTRACT.

THIS CASE WENT FROM --

THE COURT: ARBITRATION FEES EVER BEEN PAID?

MR. CHAGARIS: YES. DAMAGES WERE HEARD.

LET ME BRING TO THE ISSUE THIS MOTION, THESE SAME MOTIONS OR SANCTIONS WERE ALREADY HEARD BY JUDGE JOHNSTON, IT'S INCLUDED IN HIS MOTION.

SO IT'S OUR POSITION, IT'S NOT EVEN RIGHT TO